

Minutes of the December 14, 2012 Regular Council Meeting

Call to Order and Flag Salute at 3:30 pm by Mayor Serio.

Council in Attendance: Serio, Bunting, Langan, Weistling, Tingle, Carmean and Smallwood

Absent: None

Sussex County Councilman Vance Phillips was present and addressed the assembly. Mr. Phillips noted that he is pleased to have helped the town by securing funds from the County Council for lifeguard coverage of the State beach. He looks forward to being of further assistance to the town and wished everyone a happy holiday.

Presentation of Audit Report – Tom Sombar, Sombar and Company, CPAs, PA

Mr. Sombar reviewed the recent Town Audit noting that the Town has shown an increase in assets (mostly capital assets) and that the increase in liabilities was mostly due to a note that was payable at the time of the audit. In response to a question from Council Member Carmean, Mr. Sombar advised that new auditing rules/regulations regarding “unassigned funds” has caused a negative balance but that the town is in good financial standing. A number of outstanding checks will be addressed in the future.

President’s Report

- Mayor Serio advised that the bayside is still cleaning up after Hurricane Sandy. The process may take several more months. She advised property owners to keep good records of the repairs and to hire professionals.
- Mayor Serio wished everyone a happy and safe holiday season.

Topics for Discussion and Possible Action

a. Resolution #59-2012 Arbor Day Declaration

Mayor Serio introduced the Resolution naming April 26, 2013 as Arbor Day in Fenwick Island noting the importance of trees to the environment (Resolution included in these minutes).

DISCUSSION

None

Motion to approve Resolution #59-2012 Arbor Day Declaration – Council Member Langan

Second – Council Member Bunting

Vote: All in favor (7-0)

b. Sidewalks Improvements – Town Manager Burke

Mr. Burke advised Council that the project is moving forward. He expects DeIDOT to approve the plan to place a sidewalk from the Town Park on Cannon Street to Bayard Street. He expects bid documents to be ready in January and the project to be complete by April.

c. C&O Review of 30’ Height Restriction – Council Member Weistling

Council Member Weistling advised that, due to substantial flooding on the bayside, the height restriction will be reviewed in the future. There are several areas of concern some of which are being addressed today with C&O proposed first readings. Flood maps are being redrawn and will be in effect in 2014. Mr. Weistling strongly suggested that the town be pro-active in addressing the flood plain issue and explore elevating bayside properties above ground level. The increase in the height restriction will be for flood mitigation only and not for cosmetic purposes. He asked interested parties to contact him, the Charter and Ordinance Committee, or Building Official Schuchman with concerns/questions/suggestions. The C&O will probably take the matter up in February.

Approval of Minutes:

Motion to Approve the Minutes of October 26, 2012 Meeting - Council Member Carmean

Second - Council Member Smallwood

DISCUSSION – None

Vote: 7-0 Minutes Approved

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Treasurer's Report:

Council Member Bunting presented his report. The town is doing well considering some major expenditures due to storm recovery efforts.

Motion to accept the Treasurer's Report – Council Member Tingle

Second – Council Member Smallwood

DISCUSSION – Mayor Serio asked if there will be some budget adjustments; Council Member Bunting advised that the Budget Committee will meet on January 23 to consider changes. Council Member Langan thanked Mr. Bunting for keeping the town on good footing.

Vote: All in favor to accept the Treasurer's report (7-0)

Town Manager Report:

Town Manager Burke reported that:

- He thanks all staff for their work in staying on task with expenses; a few line items are over budget and they will be addressed in January.
- The Cannon Street Park project has been delayed due to weather. The rain garden will be installed in the spring; the DNREC subaqueous application is open for comment until 12/25/12 after which the town will know if it is OK to proceed with the kayak launch. The parking area and drainage will be addressed in the spring and he expects the park to be ready by Arbor Day or Memorial Day.
- DelDOT has advised that they will be doing curb ramps along Route 1 to make them ADA compliant. In response to a question from Council Member Carmean, Mr. Burke advised that the project will take place December through February or March depending on weather.
- The medians are being replanted/replenished. The project will continue all winter weather permitting.
- The Town Hall office interior renovation is nearing completion.
- FEMA representatives will meet with him on Monday 12/17/12 to review expenses the town incurred due to Hurricane Sandy. Mr. Burke expects a 75% reimbursement from FEMA. In response to a question from Council Member Carmean, Mr. Burke advised that the cost of the clean-up dumpsters was approximately \$700 each. Public Works Supervisor Reed noted that each dumpster included a \$130 haul fee and \$84 per ton to dump. Each dumpster weighed approximately 5 tons. In response to a question from Council Member Weistling, Mr. Burke advised that one dumpster will remain on the property at the rear of Town Hall for the public to use. The Public Works Department will continue to pick up storm-related debris on Mondays until the end of the year and possibly into January.
- The grant request for funds to acquire a mobile fuel tank is still in progress. Deadline for submission is 3/31/13.

Department Reports:

- Building Official – Pat Schuchman's report is included in the meeting packet. In addition to those items in the published report, Mrs. Schuchman advised that business license renewals have been mailed out. There were three new construction permits in November and 35 permits related to storm damage. In response to a question from Council Member Smallwood, Mrs. Schuchman advised that the town did not charge a permit fee for storm-related work. She is not able to track the amount of damage because of this.
 - Mrs. Schuchman attended a FEMA flood map workshop at which time it was announced that the changes will be opened up for public review and comment 1/31/13. There will be several public meetings and a 90-day appeal period prior to final implementation in 2014.
 - She also attended a NFIP (National Flood Insurance Program) workshop regarding changes to the plan (including flood maps). The Federal Government will discontinue its subsidy thus causing an increase in the cost of the insurance to the property owner. Increases will be phased in over several years. She noted that the town will experience significant increases in the cost of flood insurance and recommends revisiting the 30' height restriction. She encouraged the town to review and strengthen its ordinances now in order to exceed the minimum FEMA regulations.
- Public Works – Bryan Reed advised that his report is included in meeting packet. He is working with the Town Manager on the mobile fuel tank grant.
- Fenwick Island Beach Patrol – no report
- Police Department – Chief Boyden reported that in addition to his report (included in Council booklet) a post-storm assessment meeting was held. It was helpful in assessing the job that was done and what is needed in

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the future. In response to a question from Council Member Weistling, Chief Boyden reported that the new Public Safety Building was used to house members of the National Guard and DelDOT and that conference calls with other agencies were conducted from that building.

Committee Reports:

- Beach Committee – No report
- Environmental Committee – Chair Mary Ellen Langan reported that the committee will meet again in early spring.

Planning Commission: No report

Charter & Ordinance

- **Proposed First Reading Chapter 52 (Beaches) Beach Concessions – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed First Reading (copy attached to these minutes)
Second – Council Member Tingle

DISCUSSION

Council Member Weistling advised that this change is modeled after those in place in Bethany Beach and Rehoboth Beach. South Bethany does not have an ordinance but rather includes all specifics in the contract documents. Details as to fees etc. are purposely excluded from this ordinance and will be placed in the contract specifications for each vendor making application. This change is offered so that council will have an ordinance on the books in the event that they decide to pursue the topic. Food and beverages are included in the ordinance change in the event that it is needed in the future. Town Manager Burke advised that bid documents are being drafted and will be ready in time for vendors to take advantage of the summer season.

VOTE: All in favor (7-0)

- **Proposed First Reading Chapter 61 (Building and Utility Construction) Propane Tanks – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed First Reading (copy attached to these minutes)
Second – Council Member Langan

DISCUSSION

Council Member Weistling read the entire change into the record advising that property owners will be required to secure propane and other fuel tanks according to FEMA and/or provider specifications. Deadline will be June 1, 2014. Council Member Langan noted that some broke loose during Hurricane Sandy. Council Member Weistling advised that a brochure is available on how to secure the tank or property owners should contact the provider to do so. In response to a question from Council Member Carmean, Mr. Weistling noted that penalties are not included in this section as they are already addressed in Chapter 61. Mr. Weistling advised that C&O are exploring a resolution to ground-level boardwalks as well.

VOTE: All in favor (7-0)

- **Proposed First Reading Chapter 116 (Peace and Good Order) – Smoking – Council Member Weistling**

Council Member Weistling motioned that Council accept the proposed First Reading (copy attached to these minutes)
Second – Council Member Langan

DISCUSSION

Council Member Weistling advised that this smoking ban is simple and brief. Environmental Committee Chair, Mary Ellen Langan, thanked the C&O for its work and believes that the final ordinance change is simple and easy to understand. It can be changed if needed.

- Mayor Serio advised that the Fenwick island Police Department will be tasked with giving a written warning of violation.
- Council Member Weistling noted that this change is modeled after the Bethany Beach ordinance; Chief Boyden advised that the warning “ ***No person shall be prosecuted for violation of this section unless signs, readily visible to the public, are posted in appropriate areas at or near the entrance(s) to those areas where smoking is prohibited***” must be included in order that the town might prosecute the offense. Council Member

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Carmean objected to the wording believing it to be awkward. Building Official Schuchman advised that Chapter 112-3 Parking is the same as that being proposed here; Mayor Serio believes this clarifies the town's responsibility to post signs.

- Council Member Smallwood objected to more signage and asked if the warning could be stenciled on the road surface and the extent of the coverage for the ban. Council Member Weistling advised that this ban will extend only to the Town-controlled areas. Chief Boyden suggested using the international symbol for "no smoking."
- Town Manager Burke advised that the American Lung Association has contacted him offering a mini grant to help with the cost of signage.

VOTE: All in favor (7-0)

Old Business

Council Member Weistling asked the status of Seal Island and the snow geese population. Council Member Smallwood advised that DNREC is not taking any action on either matter.

New Business – No Action to be Taken

None

Public Participation:

- Vicki Rymer (8 E Georgetown St) – expressed her concern that the town may suffer exposure to uncovered funds. Town Manager Burke offered to explore the matter.
- John Belian (1 W Houston St) – thanked Council for supporting the fishing club and for the town's response during the recent storm.
- Buzz Henifin (48 Windward Way) – thanked Public Works for doing a good job during the storm. Mr. Henifin would like the park committee to consider naming the new park after Mary Pat Kyle. Mayor Serio advised that the park will not be named and no signs will be placed until at least Arbor Day if not later. Mr. Henifin advised that he believes the park committee must recommend that Council consider taking the matter up; Mayor Serio reiterated that no action will be taken at this time.
- Lynn Andrews (1205 Schulz Rd) – asked if the no smoking warning can be placed on existing signs. Mayor Serio suggested that tactic may not be effective but the town will look into attaching the warning to an existing sign.
- Buzz Henifin (48 Windward Way) – would like the sign placed on the top of the dune; Council Member Weistling advised that it will be placed at the start of the enforcement area at the street side bottom of the dune.

Upcoming Events and Meetings:

Mayor Serio announced all upcoming meetings and events.

Motion to adjourn – Council Member Weistling

Second – Council Member Carmean

Meeting adjourned at 5:01 PM.

Agnes DiPietrantonio, Town Clerk
for Diane Tingle, Secretary

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NOTICE

On December 14, 2012 The Fenwick Island Town Council
Passed the Following Resolution #59-2012
Arbor Day 2013

Whereas, J. Sterling Mortin established the first Arbor Day on April 10, 1872 in his home state of Nebraska to urge Americans to stop misusing their natural resources and begin to practice conservation by planting trees; and

Whereas, the holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska, and

Whereas, Arbor Day is now observed throughout the nation and the world, and

Whereas, trees can reduce the erosion of our precious topsoil by wind and water, lower our heating and cooling costs, moderate the temperatures, clean the air, produce oxygen and provide habitat for wildlife, and

Whereas, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products, and

Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal,

Whereas, the Town Council, of the Town of Fenwick Island, desires to urge all citizens to plant and care for trees to gladden the heart and promote the well-being of this and future generations.

Therefore, the Town Council, of the Town of Fenwick Island, on behalf of the citizens and property owners of the Town of Fenwick Island, in order to accomplish this goal, do hereby establish for this purpose, and do hereby proclaim **April 26, 2013** as Arbor Day in the Town of Fenwick Island, and urge all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

Attest: _____
Agnes D. DiPietrantonio, Town Clerk

Audrey Serio, President of Council

Diane B. Tingle, Council Secretary

I, Diane B. Tingle, Secretary of the Town Council, of the Town of Fenwick Island, Delaware, do hereby certify that the foregoing is a true and correct copy of the Resolution passed by the President and Council at a meeting on December 14, 2012 at which a quorum was present and voting throughout and the same is still in force and effect.

Date

Diane B. Tingle, Council Secretary

Proposed First Reading – December 14, 2012

ARTICLE V Beach Concessions

§52-17 Definitions.

As used in this Article, the following terms shall have the meanings indicated:

ANNUAL FEE - The compensation due the Town from the Concessionaire each year for which he/she is awarded privileges under this Article.

BEACH – That portion of the shore of the Atlantic Ocean which extends from the mean low water line inland to the landward toe of the primary dune.

BEACH SERVICE - The selling or renting of services or goods, including, but not limited to, floats, rafts, boogie boards, other recreational equipment, umbrellas, chairs, food and/or beverages.

CONCESSIONAIRE - Any person, corporation, partnership, unincorporated association or other business entity to whom or which the privileges granted under this Article may be awarded. Such rights shall not be assignable except with the written approval of the Town Council.

CONTRACT - The formal document between the Town of Fenwick Island and the Concessionaire that contains the contractual details of the Beach Service.

SEASON – The time period each year designated by the Town Council in the Contract.

§52-18 Concessionaires on Beach.

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No Concessionaire shall be allowed to operate, manage, sell or solicit a Beach Service on the Beach within the corporate limits of the Town of Fenwick Island without a written Contract awarded by the Town Council.

§52-19 Cleaning of Beach areas.

The Concessionaire, on a regular basis, shall be responsible for keeping the Beach area immediately surrounding the Concessionaire's Beach Service free from the accumulation of waste materials, surplus materials and rubbish. The Town shall allow the Concessionaire the use of Town trash cans, an arrangement which shall be set forth with more specificity in the Contract.

§52-20 Supervision of Concessionaire.

The Town Manager shall oversee and supervise the Concessionaire and all operations granted by the Beach Service Contract approved by the Town Council pursuant to this Article.

§52-21 Prequalification Application.

The Town Manager shall prequalify all persons desiring to submit a Concessionaire application pursuant to this Article.

§52-22 Public notice to submit applications.

- A. The Town Manager shall advertise in two newspapers that the Town is seeking prequalification applications and bid proposals from persons or companies qualified to be a Concessionaire and to operate a Beach Service in Town.
- B. Bids shall be opened by the Town Manager at the time and place specified in the invitation to bid and/or other bid documents. The successful bid must be accepted and approved by Town Council.

§52-23 Bids; performance bond.

- A. No bid proposal will be considered unless the same is accompanied by a cash deposit in the form of a certified check, which must be drawn on a solvent FDIC-insured banking institution, made payable to the Town of Fenwick Island. The amount of the cash deposit required shall be set forth in the invitation to bid and/or other bid documents provided by the Town. A satisfactory bid bond will also be acceptable in lieu of a cash deposit. All bid bonds shall be issued by a

surety company approved by the Town and authorized to transact business in the State of Delaware

- B. The successful bidder shall deliver to the Town an executed performance bond in an amount at least equal to one hundred percent (100%) of the successful bidder's total bid amount. All performance bonds shall be issued by a surety company approved by the Town and authorized to transact business in the State of Delaware. Said bonds shall be approved by the Town prior to execution of the Contract.

§52-24 Return of bid bonds.

The bid bonds or cash deposits of the unsuccessful bidders will be returned within thirty (30) days after the opening of the bids. Upon execution of the Contract and delivery of a Town-approved performance bond, the bid bond or cash deposit, whichever is applicable, shall be returned to the successful bidder.

§52-25 Decision of Town Council; grounds for refusal.

The Contract for a Beach Service shall be awarded to the person, corporation, partnership, unincorporated association or other business entity who or which has satisfactorily complied with this Article and the bidding process and who or which appears to the Town Council to be the applicant most likely to render the best service to the Town, its residents, and its summer visitors. The Town Council's decision shall be based on the history, experience, and reputation of the applicant as well as the applicant's ability in terms of sufficient capital and adequate equipment to successfully operate the Beach Service and carry out the expectations and obligations set forth in the Contract. The Town reserves the right to refuse any and all bids.

§52-26 Duties of Concessionaire; transfer of ownership; complaints.

- A. The Concessionaire shall be expected to maintain the Beach Service and all equipment, facilities and structures used in connection therewith in first class condition and in such minimum quantities as the Town Manager shall require. The Concessionaire shall employ courteous and competent personnel and shall operate the Beach Service in a courteous and efficient manner.
- B. The failure of the Concessionaire to employ courteous and competent personnel shall be cause for termination of the Contract by the Town.
- C. Any transfer or change of ownership or operation of the Beach Service, without having first submitted written notice to and received written approval from the Town Manager, shall be cause for termination of the Contract by the Town.

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- D. All complaints regarding the Concessionaire's personnel and/or service shall be submitted in writing to the Town Manager within five (5) days of the incident or offense giving rise to the complaint. The Town Manager may impose liquidated damages in an amount set forth in the "Fee Schedule" approved by Resolution of the Town Council if, after a reasonable investigation of the complaint received, the Town Manager determines that a violation of the Concessionaire's Contract or this Article has occurred.

Proposed First Reading – December 14, 2012

§52-27 Storage.

All goods and equipment used in connection with the Beach Service shall be stored in a manner and/or in structures approved by the Town, all of which must be built in accordance with the specifications set forth in the bid documents, Contract and/or as otherwise approved by the Town Manager.

§52-28 Liability insurance required; indemnification.

Each Concessionaire to whom or which a Contract is awarded pursuant to this Article shall carry general liability, bodily injury and property damage insurance in such amounts as are specified in the Contract. The Concessionaire shall indemnify the Town and hold the Town, as well as its agents and employees, harmless against any claim or loss, whatsoever, arising out of or related to negligence or misconduct on the part of the Concessionaire, his agents, contractors, employees, successors or assigns, all as more fully specified in the bidding documents and Contract.

Chapter 61 – Article III (Utility Construction)

Insert the following new subparagraph D. to § 61-18:

D. All outside storage tanks exceeding 25 pounds and not located at or above base flood elevations must be secured in accordance with applicable guidelines, rules, regulations and/or recommendation of the Federal Emergency Management Agency (FEMA) and/or in accordance with individual provider anchoring specifications. Effective date for proper anchoring of all outside storage tanks as indicated above shall be no later than June 1, 2014.

Re-number remaining subparagraphs in § 61-18 so that the subparagraphs previously identified as subparagraphs D. through L. shall now be identified as subparagraphs E. through M.

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Proposed First Reading – December 14, 2012

Chapter 116 – “Peace and Good Order” –

EXISTING:

Article I (Regulations Regarding Camping, Beaches and Vehicles)

PROPOSED:

Article I (Regulations Regarding Camping, Beaches, Parks and Vehicles)

Insert:

§ 116-2. Smoking.

A. Definition:

- 1) *The burning of a lighted cigarette, cigar, pipe or other matter or substance that contains tobacco.*

B. Smoking is prohibited in the following areas:

- 1) *Town parks and playground.*
- 2) *Beach.*

C. Signage Required:

- 1) *No person shall be prosecuted for violation of this section unless signs, readily visible to the public, are posted in appropriate areas at or near the entrance(s) to those areas where smoking is prohibited.*

D. Enforcement:

- 1) *A first violation of this section will result in a written warning. Subsequent violations shall result in the imposition of fines and penalties in accordance with §116-7 of this Chapter.*